

**BUREAU OF AUTOMOTIVE REPAIR**

**FINAL STATEMENT OF REASONS**

**HEARING DATES:** October 5 and 7, 2005

**SUBJECT MATTER OF  
PROPOSED REGULATIONS:** Revised Estimates; Additional Authorization;  
Customer's Designee

**SECTION AFFECTED:** § 3353, Title 16, Division 33, Chapter 1, Article 7,  
California Code of Regulations

**UPDATED INFORMATION:**

The Initial Statement of Reasons is included in the file. No changes have been made which would warrant a change to the information contained therein.

**LOCAL MANDATE:**

A mandate is not imposed on local agencies or school districts.

**SMALL BUSINESS IMPACT:**

This action may have a significant adverse economic impact on small businesses. The following alternatives were proposed to lessen such adverse economic impact on small businesses and were rejected for the reasons set forth below:

No alternatives have been considered or identified.

**SPECIFIC TECHNOLOGIES OR EQUIPMENT:**

This action does not mandate the use of specific technologies or equipment.

**CONSIDERATION OF ALTERNATIVES:**

No reasonable alternative which was considered or that has otherwise been identified and brought to the attention of the Bureau would be either more effective in carrying out the

purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed regulation.

#### **OBJECTIONS OR RECOMMENDATIONS / RESPONSES:**

The following comments/objections/recommendations were made, either in writing or orally during the public comment period or at the public hearings, regarding the proposed action:

**1. Greg Kelly, Kelly Autoworks, Inc., DBA Greg's Automotive, El Cajon, CA, in an e-mail dated and received August 30, 2005, offered the following comments and recommendations:**

- a. California consumers are already afforded the protections guaranteed by the Auto Repair Act of 1971. In the day to day running of a business (26 years), I have only run into the situation where the actual person who was paying needed to be documented a few times. The industry long ago learned that we needed to talk to the person paying the bill. Occasionally, this turns out to be someone other than the person that signs the estimate. Unless a consumer has some idea to rip off a shop, they make it clear whom to talk to. Why is more regulations/more hoops to jump through/more expense to bear needed? It certainly isn't to protect the business owner. It can only be to protect the few consumers that are out to steal from the business.

*This comment/recommendation was rejected because:*

California law<sup>1</sup> defines “customer” as “the person presenting a motor vehicle for repair and authorizing the repairs to that motor vehicle.” It is the customer, therefore, who must sign the work order (written estimate) authorizing the automotive repair dealer (ARD) to perform the work specified.<sup>2</sup> It is that same customer who must be contacted if it becomes necessary to revise the original estimate, or to change the method of repair or parts to be used.<sup>3</sup> Clearly, it is the customer who is in control and no distinction is made as to whether the customer will be the one to “pay the bill,” or even whether the customer is the registered owner of the motor vehicle. The vast majority of those in the automotive repair industry today understand that they must contact the customer for additional authorizations.

How often the situation may arise where the customer needs or wishes to make a designation is not at issue. If, as in Mr. Kelly’s experience, this occurs infrequently, the use of a separate form may be more convenient and cost effective, thereby avoiding the need to revise existing estimate/work order forms.

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<sup>1</sup> Business and Professions Code § 9880.1(j)

<sup>2</sup> Business and Professions Code § 9884.9(a) and 16 CCR § 3353

<sup>3</sup> Business and Professions Code § 9884.9(a) and 16 CCR § 3353(c) and (e)

On the other hand, incorporating the designation into the written estimate form may be more desirable to others in order to eliminate the additional form. For that matter, incorporating the designation into an existing form could be as simple as using a rubber stamp, when necessary, to add the required information to all copies of an individual estimate/work order. The choice is really up to the individual ARD's preference.

Effective January 1, 2005, the law was amended by Chapter 874, Statutes of 2004,<sup>4</sup> to permit a customer to designate another person to give additional authorization for revised estimates.<sup>5</sup> Those amendments specify that a designation shall be in writing and signed by the customer. However, the form and content of the designation, and the procedures for its recording by the ARD, are left to the Bureau to determine by regulation. That is the sole purpose of this proposed regulatory action – to implement those statutory changes.

There is also a liability factor to be considered. Just this year, and subsequent to the statutory change taking effect, the Bureau has learned of two situations where a customer directed that another person be contacted if additional authorizations were needed. The ARDs, having no guidance as would be provided in this proposed action, did not clearly document the designation. After it was determined that additional repairs not previously included in the original estimate were necessary, additional authorizations were obtained from the designees. When the customers later were presented with invoices that included the costly additional repairs, they refused to pay and denied authorizing the designees to approve additional charges. These situations could have been avoided, had the ARDs used the form prescribed in this proposed action. In some ways, this proposal serves the best interests of the industry as much as it does the consumer.

- b. If it is to make the paperwork more encumbering, more complicated to complete, who benefits? I [am] already part trained in law, in haz mat, in smog regs and countless others. My industry does not need more regulation that amounts to studying law just to repair and maintain vehicles. The answer is really to step hard on the bad guys in the industry, instead of trying to legislate morality and ethics. Think like the criminals and you'll catch the criminals. Legislate and regulate and you will only chase the real business people out of the business, leaving you with a much higher percent of crooks to regulate. And, they don't follow the rules anyway.

*This comment/recommendation was rejected because:*

As previously stated, the sole purpose of this proposed regulatory action is to implement the recent statutory change. That change allows a customer to designate another person to receive and approve revised estimates and directs the Bureau to prescribe the form and content of the designation and the procedures

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<sup>4</sup> AB 1079 (Bermudez)

<sup>5</sup> Business and Professions Code § 9884.9(d)

for its recording. Options are provided that will allow each automotive repair dealer to decide how to comply – use of a separate form or incorporation of the designation into the written estimate form.

This is not about “legislating morality and ethics” or “stepping hard on the bad guys.” It’s about implementing statutory changes and mandates.

**2. Bob Haynes, BAR Liaison, Pep Boys Automotive, in oral testimony presented at the October 5, 2005 public hearing, offered the following comments and recommendations:**

- a. On behalf of Pep Boys, I do support the regulation change as stated in the materials that have been presented.

*This expression of support was accepted and considered in the adoption of the proposed action.*

- b. I do have some questions as to how in fact, it’s going to work. According to the materials given me here, it states that the dealer’s going to be required to either have a form or have a statement on their work order. So if I’m clear, we either have to create a form and maintain that form and keep it with the other documents created by the transaction, or a statement can actually be added to the given work order. Is that correct? And that would be on every work order? Okay, and yeah, I do support this type of additional authorization.

*This comment/recommendation was accepted and considered in the adoption of the proposed action.*

Mr. Haynes is correct – the proposed action does provide the options of either incorporating the designation into the written estimate form or using a separate designation form. If a separate form were used, it would have to be retained with the other documentation concerning that repair transaction.

**3. Tom Rabe, Pep Boys Automotive, in oral testimony presented at the October 5, 2005 public hearing, offered the following comments and recommendations:**

- a. I am definitely in favor of the changes. I think it makes it clearer and easier, not only for the business, but also for the customer, to understand that there is a requirement that somebody be designated for authorization if they are not going to be doing the authorization themselves. We have encountered this several times in the past and I think that this is a very good change to the laws.

*This expression of support was accepted and considered in the adoption of the proposed action.*

**4. Carol Bartels, Automotive Service Councils (ASC) of California, in oral testimony presented at the October 7, 2005 public hearing, offered the following comments and recommendations:**

- a. I oppose this proposal because it's going to cause a hardship on small businesses. When you have a small shop with one person in it and he's trying to do repair orders and get people in and out and whatever and he has to stop and do something extra, it's really hard, and most of them won't do it. I think you'll find out as you go down the line that the smaller shops won't even think about this. I mean, they have other things on their mind that they have to do. We have never had this problem and usually, when we ask for a number of whom we can contact if there's - if we need to, they usually anymore give us a cell phone, which they have with them. So I'm not sure what the problem is, why you have to go through all of this, because they want somebody else to say yes or no on their car. I can see if they were going back east and be gone for a month and you've got their car and they say call mom or dad or whoever and they can help make the decision. Usually, if you call mom or dad, they call whoever's car it is and talk to them first and then call us back.

*This comment/recommendation was rejected because:*

Effective January 1, 2005, the law was amended by Chapter 874, Statutes of 2004, to permit a customer to designate another person to give additional authorization for revised estimates. Those amendments specify that a designation shall be in writing and signed by the customer. However, the form and content of the designation, and the procedures for its recording by the ARD, are left to the Bureau to determine in regulation. That is the sole purpose of this proposed regulatory action – to implement those statutory changes.

How often the situation may arise where the customer needs or wishes to make a designation is not at issue. If, as in Ms. Bartel's stated experience, this never occurs, the ARD would not have to do anything differently from what they do now. There would be no cost or burden from this proposed action if customers do not make use of the newly enacted statutory provision.

The only time that the designation form would have to be employed is when a customer actually needs or wants to designate another person to act on his or her behalf. For those ARDs that never or rarely, experience this, using a separate form may be the most convenient and cost effective, thereby avoiding the need to revise existing estimate/work order forms. In this way, a few copies of the form could be easily reproduced and kept on hand, should the occasion ever arise when they would be needed. This would cost the ARD next to nothing. On the other hand, incorporating the designation into the written estimate form may be more desirable to others in order to eliminate the additional form. For that matter, incorporating the designation into an existing form could even be as simple as using a rubber stamp, when necessary, to add the required information to all

copies of an individual estimate/work order. The choice is really up to the individual ARD's preference.

There is also a liability factor to be considered. Just this year, and subsequent to the statutory change taking effect, the Bureau has learned of two situations where a customer directed that another person be contacted if additional authorizations were needed. The ARDs, having no guidance as would be provided in this proposed action, did not clearly document the designation. After it was determined that additional repairs not previously included in the original estimate were necessary, additional authorizations were obtained from the designees. When the customers later were presented with invoices that included the costly additional repairs, they refused to pay and denied authorizing the designees to approve additional charges. These situations could have been avoided, had the ARDs used the form prescribed in this proposed action. In some ways, this proposal serves the best interests of the industry as much as it does the consumer.

- b. Statistically, how many complaints from people on this one subject has BAR had? We don't know that, and so we're not really sure why [automotive repair dealers] have to go to all this trouble. We've never had a huge problem that I know of, and I haven't talked to any shop so far that have had any problems, but I would like to know how many complaints BAR has had on it.

*This comment/recommendation was accepted and considered in the adoption of the proposed action.*

As previously stated, the sole purpose of this proposed regulatory action is to implement the statutory changes enacted through Chapter 874, Statutes of 2004. The number of complaints received and mediated by BAR on this subject is irrelevant and not germane to the proposed action since there has never been a provision in law allowing a customer to designate another person to give additional authorization for revised estimates. While the use of the prescribed form might assist BAR in resolving disputes, should they arise, that is not the purpose here, but rather an ancillary benefit.

BAR's complaint mediation statistics do not include data relating specifically to revised estimates and additional authorizations. However, the data show that out of an average of approximately 21,615 consumer complaints received annually, about 1,345 (6%) include the subject of written estimates, in general, in their allegations. How many of those complaints involve revised estimates and additional authorization cannot be determined at present.

- 5. Marty Keller, Executive Director, Automotive Repair Coalition (ARC), in oral testimony presented at the October 7, 2005 public hearing, offered the following comments and recommendations:**

- a. We have a comment on the new [paragraph (5) of subsection (f)], which reads:  
“The designation form shall be completed in duplicate and distributed as follows.”  
We would like the Bureau to specify, in writing, the definition of “completion.”  
There are some blanks on the proposed form that the customer may not complete, such as e-mail address. Our concern is that we don’t want the [automotive repair] dealer to be held responsible for not having a form completed if there are items on this form that are [left blank]. In other words, the ARD needs to know precisely what he’s being held liable for in the enforcement of this regulation.

*This comment/recommendation was accepted and considered in the adoption of the proposed action.*

“Completed,” within the context of this proposal, does not mean that every blank on the form must have something entered in it. What it is intended to mean, and what it should be reasonably and logically interpreted to mean, is that the information that is available and that is provided by the customer, has been entered in the applicable spaces, and that the customer has signed and dated the form.

A registrant cannot reasonably be expected to be responsible for recording information that either the customer does not provide or that does not exist. Not everyone has a fax machine or an email address, but it is also possible that someone who is available through email might not be reachable by telephone. Including all the various means of communication in the form was an attempt to provide for all means of communication that might be available, but was not intended to require that every designee be accessible by every means of communication specified.

The Bureau has decided not to propose or adopt modified text that would attempt to define the term “completed” for the purposes of this regulatory action. Further clarification, beyond these responses to Mr. Keller’s comments, is not necessary.

**6. Andrew Pollino, Chairman, Government Affairs Committee, Automotive Service Councils (ASC) of California, in an e-mail dated and received October 7, 2005, offered the following comments and recommendations:**

- a. I recommend that you include language in your regulation changes that allow spouses to automatically be designees. Our Association's legal council tells me there is already ample legal precedent for spousal representation without special approval. I believe allowing spouses to be designees without additional forms would simplify things greatly.

*This comment/recommendation was accepted and considered in the adoption of the proposed action.*

Mr. Pollino appears to be correct in his characterization of the spousal relationship and makes a very good point. However, this proposed action is not necessarily about who has the authority to act on behalf of the customer – in this case, a spouse – but rather who the customer directs the ARD to contact. While a spouse may have the authority to act on behalf of the customer, he or she may not have the necessary knowledge, and the customer may not want to place a spouse in the position of being asked to authorize something they have no knowledge of.

Whether the designee is a spouse, another relative or a friend, the designation needs to be documented. There has been no demonstration of a need to distinguish between how the designation of a spouse is recorded and how the designation of another person, not a spouse, is recorded. Using the form prescribed by the proposed action does not appear to diminish the rights or authority of a spouse and will generally fit all situations and circumstances.

**7. Bob Constant, President, Automotive Service Councils (ASC) of California, in an e-mail dated and received August 30, 2005, offered the following comments and recommendations:**

- a. Regarding the proposed changes to Signature Designee for work orders. Currently the customer dropping the vehicle off signs the work order authorizing initial work. If another person is to be contacted, that information is normally addressed at the time of drop off, or during estimate revision. The creation of another, at least duplicate, form will not improve the communication flow and in fact it may well confuse matters.

*This comment/recommendation was rejected because:*

If, as Mr. Constant claims, it is a common practice for the designation to be “addressed at the time of drop off,” the proposed action will change that very little. The only thing that would change is that the ARD would have specific guidance on how to record the designation. If the designation information were already being recorded under current practices, the proposed action would not be duplicative and, if anything, provides clarification not confusion.

Neither does the proposed action create another form. As previously stated, the use of a separate designation form is an option available to ARD’s, based on their individual preference and experience. The designation could also be incorporated into existing estimate/work order forms by revision or the use of a rubber stamp.

- b. The rationale provided for this change is not congruent with the reality seen in auto repair facilities at this time. It may be in the interest of insurance companies, but they are the minority. Auto repair facilities deal with husbands and wives, and/or their children. We are already held by California valid agency laws.



*This comment/recommendation was rejected because:*

It is not entirely clear what Mr. Constant is referring to when he states that “[t]he rationale provided for this change is not congruent with the reality seen in auto repair facilities.” The Notice of Proposed Action (in the Informative Digest) and the Initial Statement of Reasons (in the specific purpose and factual basis sections) make it very clear that the purpose of this proposed regulatory action is to implement statutory changes. If Mr. Constant is claiming that customers never make designations, then the testimony on record in this rulemaking proceeding would clearly refute that claim. In fact, his previous comment (see comment a., immediately above) would be in direct conflict with such a claim.

There is certainly no benefit to insurance companies since they and their employees and representatives are expressly prohibited from being designees. This prohibition is directly addressed in Business and Professions Code sections 9880.1<sup>6</sup> and 9884.9<sup>7</sup>, and reinforced in the proposed action<sup>8</sup>.

The fact that ARDs “deal with husbands and wives, and/or their children,” and “are already held by California valid agency laws,” is not in dispute. Whether the designee is a spouse, another relative or a friend, the designation needs to be documented. This proposed action is not necessarily about who has the authority to act on behalf of the customer, but rather whom the customer directs the ARD to contact. While a spouse may have the authority to act on behalf of the customer, he or she may not have the necessary knowledge. The customer may not want to place a spouse in the position of being asked to authorize something they have no familiarity or experience with.

- c. I if someone signs a designee authorization, what will be the proof that the person appointed as the agent is valid?

*This comment/recommendation was rejected because:*

The person designated, in writing, by the customer to approve revised estimates and authorize additional charges is, by virtue of being designated, a “valid” agent of the customer. The “proof” is in the designation form itself which includes the statement, “I hereby designate the individual named below to authorize any additional work not specified or parts not included in the original written

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<sup>6</sup> Subdivision (j) of § 9880.1 of the Business and Professions Code defines “customer” to be “the person presenting a motor vehicle for repair and authorizing the repairs to that motor vehicle.” It further states that, “‘Customer’ shall not mean the automotive repair dealer providing the repair services or an insurer involved in a claim that includes the motor vehicle being repaired or an employee or agent or a person acting on behalf of the dealer or insurer.”

<sup>7</sup> Subdivision (d) of § 9884.9 of the Business and Professions Code provides, in pertinent part, that “a designee shall not be the automotive repair dealer providing repair services or an insurer involved in a claim that includes the motor vehicle being repaired, or an employee or agent or a person acting on behalf of the dealer or insurer.”

<sup>8</sup> See new paragraph (4) of subsection (f) of § 3353.

estimated price for parts and labor.” As long as the person designated is not expressly excluded from eligibility pursuant to subdivision (d) of Section 9884.9 of the Business and Professions Code, the designation should be considered valid.

If there is some question as to the designee’s eligibility under subdivision (d) of Section 9884.9, the ARD may wish to ask the customer about the person’s role in the repair transaction. If and when it becomes necessary to obtain additional authorization for a revised estimate, the ARD could ask the designee about their role in the repair transaction. If the transaction involves general automotive repair, other than auto body collision repair, all the ARD needs to be concerned about is that neither the ARD nor their employees may be a designee. That should be readily apparent at the time the designation is made. On the other hand, if the transaction involves collision repairs, the ARD may wish to determine if the designee is the insurer, or an employee or representative of the insurer, involved in the claim that includes the motor vehicle being repaired. Such inquiries are not expressly required by the proposed action, but may be in the ARD’s best interest since acceptance of the designation of an ineligible person is expressly prohibited.

- d. Husbands and wives are bound by "apparent authority" [wherein, ] by California law, husbands and wives can bind each other to pay for contracts.

*This comment/recommendation was rejected because:*

Please refer to comments 6., a., and 7., b., above.

**8. Denise Pina, Chapter 48 Representative, Automotive Service Councils (ASC) of California, in an e-mail dated and received August 30, 2005, offered the following comments and recommendations:**

- a. I recommend that you include language in your regulation changes that allow spouses to automatically be designees for repair orders. I believe allowing spouses to be designees without additional forms would simplify things greatly and allow flexibility for the consumer.

*This comment/recommendation was rejected because:*

Please refer to comments 6., a., and 7., b., above.

- b. I think it is critical to assure there is no language that would allow a company or other entity to take power of attorney in place of the consumer, for example, an insurance company. It is a conflict of interest and potentially harmful to the consumer as well as the businessperson. If an insurance company can dictate the repair process and what exactly they will pay for without the knowledge of the consumer, the consumer is left without recourse and it takes away the current checks and balances in place. Parts, paint and materials and methods of repair are

not all created equal in quality and standards. The consumer has the right to know how their vehicle is being repaired and decide what is being done to their vehicle. Consumers pay for insurance in order to have funds available to pay for their vehicle's proper repair when and if they are in need. It is the consumer who is paying for their repairs to be completed when they need it. Our regulations should not interfere or limit consumer rights in any way – knowingly or unknowingly.

*This comment/recommendation was rejected because:*

The provisions of Business and Professions Code sections 9880.1 and 9884.9 expressly prohibit insurers, their employees and agents from being considered the customer and from being the customer's designee. That same prohibition also applies to automotive repair dealers, their employees and agents. The language of the proposed action also refers to and reiterates those prohibitions. Therefore, it is unnecessary to address this issue further in this proposed action.